



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Ricoh Corporation

**File:** B-234617

**Date:** June 29, 1989

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### **DIGEST**

Allegation that invitation for bids requirements for facsimile equipment capable of transmitting and receiving both commercial information and secure information within Department of Defense agencies and North Atlantic Treaty Organization are unduly restrictive of competition is denied where the requirements are shown to reflect minimum needs of the agency and the protester does not submit comments establishing otherwise.

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### **DECISION**

Ricoh Corporation protests that the specifications in invitation for bids (IFB) No. MDA903-89-B-0013, issued by the Army's Defense Supply Service-Washington (DSS-W) for six transportable TEMPEST facsimile (fax) machines, are unduly restrictive. We deny the protest.

The IFB called for digital fax machines interoperable with both commercial and TEMPEST secure fax machines, i.e., machines capable of transmitting and receiving either secure or nonsecure information, within the Department of Defense (DOD) and the North Atlantic Treaty Organization (NATO) countries. The IFB incorporated MIL-STD-188-161A, which sets forth interoperability and performance standards, including dual mode (i.e., secure/nonsecure) transmission, as requirements for DOD fax equipment to assure compatibility within DOD and with NATO.1/

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1/ Ricoh protested prior to the February 27, 1989 bid opening, but the agency proceeded with bid opening. Three bids were received, and the bid submitted by Cryptek, Inc., was low. The agency has advised us that it made award to Cryptek on April 24, notwithstanding the protest, based on urgent and compelling circumstances, in accordance with 4 C.F.R. § 21.4(a) (1988).

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Ricoh argues that the 161A-STD is unduly restrictive of competition because currently only one company, Cryptek, is capable of furnishing fax machines interoperable with both secure and nonsecure machines. Ricoh seems to attribute this lack of competition to uncertainties in 161A-STD, which Ricoh believes should not be applied until its requirements become more settled and other firms, including Ricoh, have time to develop conforming equipment. Ricoh contends that machines conforming to 161A-STD will not achieve interoperability with NATO countries in any case, because none of the NATO countries owns or has access to conforming machines. Ricoh concludes that the Army should procure fax equipment without the 161A-STD.

When a protester alleges that specifications unduly restrict competition, the agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual minimum needs. Chi Corp., B-224019, Dec. 3, 1986, 86-2 CPD ¶ 634. This requirement reflects the agency's obligation to create specifications that permit full and open competition pursuant to the Competition in Contracting Act (CICA), 10 U.S.C. § 2304(a) (Supp. IV 1986). Once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are clearly unreasonable. Id. The mere fact that a particular prospective offeror is unable or unwilling to compete under specifications that reflect the agency's needs does not establish that the specifications are unduly restrictive. Interscience Systems, Inc., B-205458, Mar. 9, 1982, 82-1 CPD ¶ 220.

We find that the Army has presented prima facie support for its position that the fax machines here must satisfy the dual mode transmission requirement. The Army explains that the Secretary, Chief of Staff, Vice Chief of Staff, and their support staffs, for whom these six machines are being procured, have been unable to transmit classified information while traveling in foreign countries, since their machines were not compatible with both secure and nonsecure equipment. The officials could not send classified information on fax machines compatible with only nonsecure equipment because the information would travel across long distance telephone lines and could be intercepted.

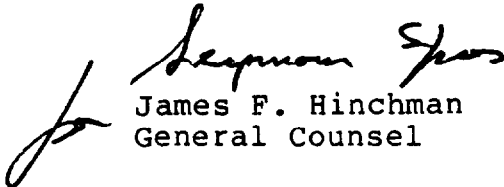
The Army also reports that, while not all NATO machines meet the 161A-STD interoperability requirements, many NATO countries have bought fax machines compatible with the secure and nonsecure transmission equipment. Moreover, the Army explains that interoperability is improving as NATO

countries are complying with an international standardization agreement that establishes parameters consistent with 161A-STD.

Ricoh has not submitted comments rebutting the Army's position that dual mode transmission is necessary for these six fax machines. Accordingly, we conclude that the requirement is unobjectionable; the mere fact that Ricoh and other firms may be unable to furnish fax machines capable of dual mode transmission does not establish otherwise. Interscience Systems, Inc., B-205458, supra.

Much of Ricoh's argument is focused on its view that 161A-STD should not be adopted for all DOD fax equipment and that fax machine procurements, including this one, should be delayed until Ricoh and other firms have had an opportunity to develop conforming equipment. As the Army points out, however, the question of whether 161A-STD should be implemented by DOD is a matter of policy not relevant to our consideration of whether the Army is justified in requiring dual mode transmission for the six machines in issue here; whether or not 161A-STD is adopted, we have found that the dual mode transmission requirement has been justified.

The protest is denied.

  
James F. Hinchman  
General Counsel